

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

F., by and through his parents,	)	
MARY and TOM FASNACHT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 4:08CV1576-DJS
	)	
MISSOURI STATE BOARD OF	)	
EDUCATION, et al.,	)	
	)	
Defendant.	)	

ORDER

Now before the Court is plaintiff's motion for leave to file out of time a memorandum in opposition to State defendant's motion to dismiss [Doc. #18]. Plaintiff states that defendant filed its motion to dismiss on December 9, 2008, and plaintiff filed its motion for leave to file a memorandum of opposition out of time on December 17, 2008.

Local Rule 4.01(B) states that, except for a motion for summary judgment under Fed.R.Civ.P. 56, "each party opposing a motion shall file, within five (5) days after being served with the motion, a memorandum...." E.D. Mo. L.R. 4.01. Rule 6(a) of the Federal Rules of Civil Procedure states that, if the period of time to file a response is less than eleven days, the day the motion is filed, weekends, and holidays are not counted. See Fed.R.Civ.P. 6(a)(1)-(2). Finally, the administrative rules governing electronic filing provides for "the addition of three days to the

prescribed period both for service by mail and for service by electronic means." E.D. Mo. Administrative Procedures for CMECF II.G, [http://www.moed.uscourts.gov/cmecf/cmecf\\_adminprocedures.pdf](http://www.moed.uscourts.gov/cmecf/cmecf_adminprocedures.pdf) (last visited Dec. 18, 2008).

The certificate of service on defendant's motion to dismiss indicates electronic filing on December 9, 2008. Accordingly, plaintiff had five days, excluding the day defendant's motion was filed, weekends, and holidays, plus three additional days to file his response. By the Court's count, plaintiff's response is not due until Friday, December 19, 2008.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for leave to file out of time a memorandum in opposition to State defendant's motion to dismiss [Doc. #18] is denied as moot.

**IT IS FURTHER ORDERED** that the clerk shall detach and separately file Doc. 18-2 as plaintiff's opposition to State defendant's motion to dismiss.

Dated this 18th day of December, 2008.

/s/Donald J. Stohr  
UNITED STATES DISTRICT JUDGE